

REMARKS ON AMENDMENTS

Claims 1 and 16 have been amended to include the elements of now canceled respective claims 2 and 17 of the support pin positioned between the axle and topwall. Other claims have also been amended for clarity and inline with the Examiner's gracious suggestions for clarity of meaning.

SECTION 112 OBJECTIONS

As noted, in informalities have been corrected employing the suggested changes by the Examiner. The Examiner also objected to claims 7-12 and 16-21 per section 112 which have also been amended for clarity or canceled.

SECTION 102 OBJECTIONS

The examiner has rejected claims 1-6, 14, and 16-21, per 35 USC §102(B) per the currently printed webpage of Paktron.

First, Applicant questions the validity of the date of publication of the cited webpage since there is no manner to ascertain accuracy and the print out does not contain actual indica from Paktron as to the date of publication. Consequently, the printed page by the Examiner has no means to determine with accuracy, when it actually published. As such, applicant objects to the use of a printout of an electronic page what has not self-authenticating dating upon it as a printed catalog would contain.

Second, with claim 1 and 16 now amended for clarity as suggested by the Examiner and including elements of previous claims 2 and 17, the citation to Paktron lacks elements of Applicant's claimed device.

As the court said in Richardson v. Suzuki Motor Co., 9 USPQ2d 1913 at 1920 (Fed. Cir. 1989):

"Rejection for anticipation or lack of novelty requires as the first step in the inquiry, that all the elements of the claimed invention, be described in a single reference."

The Paktron device, shows a bracket with two sidewalls and a single axle in a compressed engagement between a bolt, and the axle. The Paktron webpage specifically notes the device is for lightweight trailers and RV's for an obvious reason. The axle will bend easily under pressure and since it provides the mount for the wheels and one half of the device to compressibly engage the angular skid bracket, it will loose its mount if damaged or bent.

The Paktron device lacks the elements of the separate and adjacently engaged support pin in a removable engagement with said first and second sidewall of the mount between an axle and the bottom surface of said angular skid plate. It also lacks the unique function of this separate pin in providing the mechanical structure, separate from an axle, to impart the compressive force of support pin against the bottom surface of the angular skid bracket to maintain mount in said mounted position using the compressing it between a bolt or elongated member and the

separate pin. Further, as can be seen in the drawings, and as noted on page 17 lines 4-10 of the specification, the wheel can be engaged separately from the support pin, and mounted after the device is engaged to the angular skid plate. This ability to mount the wheel after the engagement provided by the pin would allow for changing the wheel or wheel if damaged, without unmounting the device from the angular skid plate. The cited art, lacking the separate support pin and its independent engagement to the angular bracket must be removed entirely to change a wheel since it employs the axle as the compression means.

As such, the printed, undated, webpage of Paktron, shows a device that lacks elements claimed by applicant in the original claims 2 and 17 of the separate pin and the function noted in the specification the pin provides. Lacking elements of Applicant's device, the citation of the printed Paktron page is respectfully traversed.

Claim Rejections per 35 USC §103

The Examiner has cited Paktron per section 102(a) against claim 7. Claim 7 depends from claim one, which has been amended for clarity, and, now includes the separate support pin originally claimed in claim 2, and the compressed engagement of the support pin, and not the axle against the bottom of the angular bracket also originally claimed in claim 2. As noted the drawings in the original application show the separate pin in-

between the axle and the angular skidplate and also note that the applicant's device, because of this separate pin, can be engaged to the angular support bracket, independent of the wheel making applicant's device easier to install and service.

No such separate pin is taught or even suggested in Paktron and the objection per section 102 to claim 7 is respectfully traversed.

CLAIMS 8-12 13 and 15 PER PAKTRON AND GILBERT

Also rejected by the Examiner per Section 102 are claims 8-12 per Paktron in view of Gilbert.

As noted, Paktron lacks elements, teaching and function, provided by the separate pin of Applicant's device, and any combination therewith of Gilbert must also fail.

Further, Gilbert is non-analogous art. Gilbert is a device employed to hold a blade while sharpening it against a hone. Gilbert has nothing to do with vehicles.

The Court has held there is a two-part test for analogous art, it either must be

1. from the same field of endeavor, regardless of the problem addressed; or
2. if not from the same field of endeavor, as the applicant's patent, the cited reference must be *reasonably pertinent* to the particular problem in which the inventor is involved.

Here, the cited art of Gilbert, is not from the same field of endeavor of temporary support of moving vehicles during a high force ground impact. Gilbert is a device a translatable mount of a blade or knife a sufficient distance to contact a hone at a sharpening angle.

Neither is Gilbert reasonably pertinent to the particular problem being solved. Applicant's device provides a secure and fixed engagement for a wheel directly underneath an impacting skid plate on a vehicle. It is adapted to pull or compress the wheeled end of a frame to center a wheel under a skid plate and leave it there.

The Gilbert device is to achieve, a sliding engagement of a blade such that the cutting edge, will slide forward from the wheel, onto the sharpening stone at the correct angle. Gilbert allows sliding the blade back and forth to achieve that angle in front of the blade. (Figure 4).

Gilbert is thus not in the same field, and is not solving the same problem and is non analogous art.

They may also serve to "guard against slipping into hindsight," Monroe Auto Equipment Co. v. Heckethorn Mfg. & Supply Co., 332 F.2d 406, 412, 141 USPQ 549, 555 (1964), cert. denied 379 U.S. 888, 143 USPQ 465, and to resist the temptation to read into the prior art the teachings of the invention in issue. *Graham et al. v. John Deere Co. et al Supreme Court* 148 USPQ 459 at 474, 1966

In using non analogous art, the Examiner may have slipped into a hindsight analysis using the teachings of Applicant's device as a menu of sorts to find various components of claimed construction to provide these benefits.

Further:

"Obviousness cannot be established by combining the teaching of the prior art to produce the claimed invention, absent some teaching or suggestion supporting the combination. Under section 103, teachings of references can be combined only if there is some suggestion or incentive to do so. The prior art of record fails to provide any such suggestion or incentive." *ACS Hospital Systems, Inc. v. Montefiore Hospital*, 221 USPQ 929, 932, 933 (Fed. Cir. 1984)

The cited art of Paktron, if validly published in the first place, makes no teaching at all. The cited art of Gilbert, teaches the use of a moving clamp, to allow a blade to be slid easily at an acute angle in a frame to contact a grinder. (Figure 13). Gilbert teaches translating a blade far enough in front of a wheel to achieve the angle for grinding desired. Only one side of a wedge contacts one surface of a planar blade rather than the entire bottom surface contacting a similarly configured top surface of an angular skid plate on two sides. Rather than teaching the contact with a similarly shaped surface and the wedge, Gilbert teaches a slotted engagement of the wedge which slides along a line defined by the slot and engages on one side only to the planar knife or blade.

There is no teaching or suggestion in Paktron for any combination, and Gilbert teaches against configuring a bottom surface of the wedge to contact the similarly shaped surface of a fixed top of a triangular skid plate.

As such, the objections per section 103 as an obvious improvement to Paktron alone, or in the combination with Gilbert are respectfully traversed as non analogous art, and/or failing to teach the combination suggested by the Examiner, and also lacking elements already pointed out above neither taught or suggested in Paktron which teaches against the separate pin providing an engagement separately from the axle.

REMARKS AND CONCLUSION

Applicants' device claims elements providing function, which are neither taught nor suggested in the cited prior art, which teaches against such combinations and some of which offers no teaching or suggestion of combination without using applicants' own application, as a teaching reference. The base claims of Applicants' device have been shown to be patentable and as such, all dependent claims thereto should also be patentable.

Additionally, Applicant as noted in the specification, considers the improvement to be substantial in that it provides an especially secure mount for the high impact on a vehicle skid plate that may be mounted and subsequently engaged with wheels that may be replaced without dismounting the device. As such

Applicant feels it is a significant advance in skid plate wheel positioning and provides great benefits to the end user and patient.

However, even if the Examiner does not consider Applicant's claimed device a great advance in the crowded art, it has been established that one should not be deprived of patent protection where it can be shown that *any genuine improvement* has been made, on comparison, with other inventions in the art, even if the improvement is slight, or lacks the appearance of a great advance in the art. In *re Lange*, 128 USPQ 365, the CCPA on page 367 stated that:

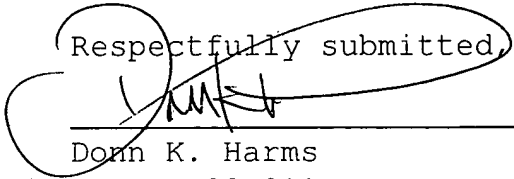
"We think that the present application is a distinct improvement of Jezalik and represents an advance in the art not obvious, having patentable novelty. The art is a crowded and comparatively simple one and in such an art, great advances are not to be expected. However patentability will not be denied to an invention which accomplishes a small, but nevertheless genuine improvement not thought of by others.."

Further, the CCPA in the case of *re Meng and Driessen*, 181 USPQ 94, on page 97, reiterated the principal that, even though the invention seems a simple advance over prior art, *after the fact*, simplicity, particularly in a crowded art, argues *for*, rather than against, patentability.

Applicants' device provides genuine improvement in the area of skid wheel placement and securement as noted, even where the improvements are considered simple in a crowded art, and not major by the Examiner, Applicants' device provides improvements that argue for patentability. As such, all claims of the application should now be in position for allowance.

Finally, should the Examiner have suggestions to more clearly define the claims to more clearly define the patentable subject matter, and hasten approval, the Applicant's attorney would be most receptive to such by telephone or Examiner's amendment.

Respectfully submitted,


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